



**AFRICAN UNION AND COMESA ELECTION OBSERVATION MISSION
TO THE 9 AUGUST 2022 GENERAL ELECTIONS IN THE REPUBLIC OF
KENYA**

STATEMENT OF PRELIMINARY FINDINGS

11 AUGUST 2022

Executive Summary

The 9 August 2022 general elections were the seventh held since the introduction of multi-party politics in the country in 1991 and the third under the 2010 Constitution. Previous polls, especially in 2007 and 2017, were marred by violence. Thus, while stakeholders made significant efforts to ensure peaceful elections, current political dynamics, particularly the shifting political alliances and the country's post-independence history of election-related violence, had many citizens speculate about the prospect of tumultuous elections.

The African Union (AU) and the Common Market for Eastern and Southern Africa (COMESA) participated in the elections following the invitation by the Government of Kenya and in accordance with their mandate to promote peaceful, credible and democratic elections in their member states. The joint AU-COMESA Election Observation Mission (EOM) assessed the compliance of the 9 August elections against national, regional and international commitments and obligations of Kenya for the conduct of democratic elections. The main preliminary findings of the Mission are:

- The 9 August 2022 General Elections were highly competitive, and the campaign was comparatively more peaceful than previous elections. There was a notable shift from ethnocentric presidential campaigns to issue-focused campaigns.
- The legal framework governing elections in Kenya was largely adequate for the conduct of credible and democratic elections. In particular, the Judiciary played a critical role in guaranteeing the right to a fair and expeditious hearing, which increased citizens' trust and confidence in the electoral process. This was evidenced by the willingness of citizens to approach the courts for adjudication. However, last-minute election-related litigations and court decisions necessitated procedural changes, which posed a risk to the smooth implementation of electoral operations. The IEBC had limited time to communicate and implement the changes.
- There was a notable improvement in the IEBC's strategic communication with stakeholders through periodic briefings and social media updates, although this came late into the process.
- The IEBC changed its use of technology in the 2022 elections. Specifically, it introduced additional voter identity verification features in the Kenyan Integrated Elections Management Systems (KIEMS) kit to provide for biometric and alphanumeric identification of voters on election day based on lessons learnt from the 2017 elections. The changes to the KIEMS provided the capture and transmission of images of the duly completed presidential election results forms from the polling station to the National Tallying Centre. As a result of

these changes to the Results Transmission System (RTS), the provisional presidential election results were publicly accessible on the IEBC portal. The Mission welcomes introducing these transparency measures to improve the integrity of the electoral process.

- Although stakeholders had initial concerns about the risk posed by the lack of mobile network coverage in 1,111 polling stations, the IEBC put measures such as using satellite phones to facilitate the transmission of results. The Mission noted that within 24 hours of the close of polling, over 95% of the polling stations had transmitted presidential results forms (form 34A) to the National Tallying Centre.
- In line with the AU election observation mission's recommendations in the 2017 elections, the IEBC was more deliberate this time in its stakeholder engagement. Specifically, the Mission notes the IEBC strategically communicated with stakeholders through periodic briefings and the use of social media. Furthermore, IEBC engaged political parties and candidates to promote peaceful elections by signing a Peace Pledge by the four presidential candidates.
- The Mission was informed about the late release of funds to the IEBC by the National Treasury. This impacted the effective implementation of key electoral processes, such as voter registration, verification of the voters' register and voter education. For instance, while the IEBC accredited several civil society organisations to complement its efforts in conducting voter education, the Mission observed that this commenced late and was not comprehensive.
- The AU-COMESA EOM noted that despite the relatively high youth population (18-35), there was low youth registration in the 2022 elections. Only 39.84% (8,812,790) of the total registered voters were youth, a decline of 5.17% from the 2017 figures. Stakeholders consulted by the Mission attributed the low youth participation to the general conception that the votes do not count in elections, lack of trust and confidence in the political system, and the youth's unemployment and poverty in particular face in Kenya today.
- The Mission acknowledged the efforts made by the IEBC to audit the voter register to enhance its accuracy and completeness to build confidence among the stakeholders. Assessment by the Klynveld Peat Marwick Goerdeler (KPMG) auditing firm highlighted key findings arising from the voter register. These relate to the transfers and voter details updates processes, registration of voters' database and systems controls inclusiveness in the registration of voters and makes recommendations to address reported findings. Although the IEBC embarked on remedial measures to update the voters' register, there were still concerns about duplications and deceased persons on the register.

- The 2022 elections witnessed a high level of participation of political parties and independent candidates. Out of the 90 registered parties, 81 contested the elections. Of the 16,105 candidates, 28.1% were independents. Many independent candidates were reportedly dissatisfied with the candidate selection processes within political parties. Notwithstanding this, the party primaries in 2022 were reportedly more peaceful than in 2017.
- The campaign environment was vibrant and largely peaceful. Political parties and candidates used various campaign methods such as mass rallies, door-to-door, distribution of campaign materials, and mainstream and social media, among others. The campaign messages were centred around socio-economic issues rather than on an ethnic basis as was in the past. While the campaigns were largely peaceful and issue-based, hate speeches, misuse of state resources, non-adherence to campaign schedules, violence, and use of criminal gangs were observed. The misuse of state resources created an unlevel playfield, especially for smaller political players. Likewise, the non-adherence to campaign schedules caused clashes among supporters. For example, in Muranga and Nyeri Counties, the Mission's Long-Term Observers (LTOs) witnessed clashes between the Jubilee Party and UDA supporters during campaign rallies resulting in violence, injuries and destruction of property. Further, the political use of criminal gangs to target political opponents by creating political zones of influence inhibited free campaigns, especially for women candidates.
- Freedom of the press was constitutionally guaranteed and ensured. This was seen in practice during the electoral process as media outlets had the space to carry out their duties. However, the effect of misinformation and disinformation from social media platforms on peace and stability remains of concern among many stakeholders.
- Kenya's vibrant civil society monitors and observes key electoral processes, advocates for electoral reforms, and conducts civic and voter education campaigns. The Mission appreciated civil society's role in the electoral process and in promoting peace and stability in the country. The Mission noted the active involvement of various civil society organisations in the electoral process. The Mission appreciates that CSOs also deployed observers and monitors throughout the electoral process.
- The Joint AU-COMESA EOM visited 504 polling stations in 38 counties across the country to observe the opening, voting, closing and counting processes. Of these, 59% were in urban areas, and 41% were in rural areas. Overall, the atmosphere was largely peaceful. The election day

operations were reasonably well-conducted and orderly, and professional. The polling staff mostly adhered to the polling procedures.

- However, many polling stations observed by the Mission did not open and close on time. In some cases, the opening was delayed by more than two (2) hours. Some of the reasons for the delay include problems with the Kenyan Integrated Elections Management Systems (KIEMS) kit, the late arrival of polling staff and materials, and poor preparations of the polling stations.

Introduction

Following the invitation by the Government of the Republic of Kenya to observe the 9 August 2022 general elections, the African Union (AU) and the Common Market for Eastern and Southern Africa (COMESA), the East African Community (EAC) deployed an international election observation mission on 2 August 2022. The Mission, which comprises ninety-three (93) short-term observers (STOs) from thirty-three (33) countries across Africa, was led by His Excellency Dr. Ernest Bai Koroma, former President of the Republic of Sierra Leone, deputised by Amb. Marie Pierre Lloyd, a member of the COMESA Committee of Elders. The two were supported by H.E. Domitien Ndayizeye, former President of the Republic of Burundi and Chairperson of the African Union Panel of the Wise and His Excellency Ambassador Bankole Adeoye, AU Commissioner for Political Affairs, Peace and Security.

The joint AU-COMESA Election Observation Mission (EOM) was preceded by the deployment of a joint pre-election assessment mission from 14 May to 21 May 2022, an election expert mission from 25 June to 25 July 2022, and a long-term observation (LTO) mission from 25 July to 20 August 2022. This comprehensive engagement demonstrated the two organisations' determination and commitment to supporting Kenya's effort to entrench a culture of democracy and peace, which are critical prerequisites for sustainable socio-economic development.

The Mission's objectives were twofold: first, to assess the technical compliance of the 2022 electoral process with AU and COMESA principles and normative frameworks and other international obligations and standards for democratic elections, as well as Kenya's national legal framework; and second, to ensure that there is a peaceful atmosphere - free from violence - and acceptance of the electoral outcome.

To achieve its objectives, the Mission undertook several activities. These included briefing the leadership and observers to orientate them about the context and preparations for the elections, regularly holding meetings and consultations with several stakeholders such as representatives of political parties, the Independent Electoral and Boundaries Commission (IEBC), Civil Society Organisations (CSOs), human rights institutions, media, the diplomatic community, among others.

This statement represents the Mission’s preliminary findings and assessments on the conduct of the 9 August 2022 general elections. It is issued while tallying and announcement of election results are still ongoing, and voting is yet to take place for gubernatorial and parliamentary seats. Therefore, this is not an overall or final assessment of the electoral process. The Mission will continue to observe the immediate post-election environment, including the results management process and resolution of electoral disputes, and may issue another statement on the pending operations. The Mission will issue a Final Report which will provide the Mission’s comprehensive findings and recommendations for improvement of future elections in Kenya.

Political Context

The 9 August 2022 General Elections mark Kenya’s third political transition since the introduction of multi-party politics in 1991. Political contests in Kenya have historically been highly competitive but heavily influenced by ethnic considerations and marked by political violence. Despite these challenges, the country has remained a stable democracy, with a progressive Constitution adopted in 2010. The 2010 Constitution formed the basis for the conduct of two consecutive democratic elections in 2013 and 2017, albeit with legal and technical shortcomings.

The 2022 general elections were largely shaped by the political dynamics and outcome of the 2017 general elections, particularly the post-election violence, which immediately strained the relationship between President Uhuru and Hon. Raila Odinga. Furthermore, the Supreme Court’s nullification of the results of the 2017 Presidential election based on non-compliance with the legal framework cast doubts on the credibility of the IEBC and the legitimacy of the electoral outcome. The opposition’s boycott of the Presidential re-run elections and non-acceptance of the results created political uncertainty and deepened societal divisions. The 2018 handshake between President Uhuru Kenyatta and Hon. Raila Odinga was meant to end the long-running political animosity between them and lay the foundation for national reconciliation.

Against this backdrop, the 2022 elections saw significant political alignments that redefined and shaped the pace of political competition. These were the *Kenya Kwanza Alliance Coalition*, which brought together twelve (12) political parties led by Deputy President Dr. William Ruto, and *Azimio la Umoja Coalition Party*, which comprises 23 political parties headed by former Prime Minister Hon. Raila Odinga. The Mission observed that despite the intensity of the contest, the political atmosphere was comparatively calmer than in previous elections. Furthermore, stakeholders consulted by the Mission acknowledged a shift from the ethnocentric focus of last presidential campaigns to issue-focused campaigns around social welfare and economic development.

Legal Framework

The legal framework guiding the 2022 general elections included the 2010 Constitution; the 2011 Elections Act; the 2016 Election Offences Act; the 2011 Political Parties Act (as amended in 2022); the 2011 Independent Electoral and Boundaries Commission Act; the 2013 Election Campaign Financing Act; the 2013 Leadership and Integrity Act; and the regulations and guidelines issued by the IEBC. In addition, they were guided by international and regional instruments governing democratic elections, to which Kenya is a signatory.

The 2022 General Elections were guided by a legal framework comprising the 2010 Constitution; the 2011 Elections Act; the 2016 Election Offences Act; the 2011 Political Parties Act (as amended in 2022); the 2011 Independent Electoral and Boundaries Commission Act; the 2013 Election Campaign Financing Act; the 2013 Leadership and Integrity Act; and the regulations and guidelines issued by the IEBC. In addition, they were guided by international and regional instruments governing democratic elections to which Kenya is a signatory.

Before the 2022 elections, there were amendments to the legal framework and procedural changes aimed at enhancing the credibility of the electoral process and strengthening democracy in the country. For instance, the amended Political Parties Act of 2011 introduced the concept of coalition parties. The 2011 Political Parties Act (as amended in 2022) provided legal clarity on party nomination, the lifespan of a provisionally registered party, party membership registers, and dispute resolution framework, among others. The stakeholders that the joint Mission interacted with pointed out that the amendments strengthened the regulation of the nomination process within political parties. IEBC also introduced administrative changes on results transmission.

The AU-COMESA EOM assessed the legal framework governing Kenya's elections as adequate for conducting credible and democratic elections. It enshrines the following principles: a multi-party-political system, regular elections, an independent election management body, national electoral dispute resolution mechanisms, and codes of conduct for stakeholders, including political parties, the media and civil society.

Election Administration and Preparations

Article 88 of the 2010 Constitution establishes the IEBC with a mandate to conduct or supervise elections to an elective office established by the Constitution and any other elections as prescribed by an Act of Parliament. The IEBC was fully constituted in September 2021 with the appointment of four new Commissioners. There were also substantive appointments to key positions in the secretariat, specifically, the Chief Executive Officer (CEO) and the Director of Information, Communication and

Technology. The Mission's view that these appointments strengthened the Commission's capacity to implement its mandate ahead of the 2022 elections.

The Mission noted that the IEBC changed its use of technology in the 2022 elections. Specifically, it introduced additional voter identity verification features in the Kenyan Integrated Elections Management Systems (KIEMS) kit to provide for biometric and alphanumeric identification of voters on election day based on lessons learnt from the 2017 elections. The changes to the KIEMS provided the capture and transmission of images of the duly completed presidential election results forms from the polling station to the National Tallying Centre. As a result of these changes to the Results Transmission System (RTS), the provisional presidential election results were publicly accessible on the IEBC portal. The Mission welcomes introducing these transparency measures to improve the integrity of the electoral process.

Although stakeholders had initial concerns about the risk posed by the lack of mobile network coverage in 1,111 polling stations, the IEBC put in place measures such as using satellite phones to facilitate the transmission of results. The Mission noted that within 24 hours of the close of polling, over 95% of the polling stations had transmitted presidential results forms (form 34A) to the National Tallying Centre.

From its consultations, the Mission noted the impact of inadequate and late release of funds to the IEBC by the National Treasury on the effective implementation of key electoral processes, such as voter registration, verification of the voter register and voter education. For instance, while the IEBC accredited civil society organisations to complement its efforts in conducting voter education, the Mission observed that this commenced late and was not comprehensive.

In line with its recommendations from the 2017 elections, the EOM noted that the IEBC was more deliberate in its stakeholder engagement. Specifically, the Mission notes the IEBC strategically communicated with stakeholders through periodic briefings and the use of social media. Furthermore, IEBC engaged political parties and candidates to promote peaceful elections by signing a Peace Pledge by the four presidential candidates.

Registration of Voters

The first phase of the enhanced continuous voter registration process commenced from 4 October 2021 to 2 November 2021, while the second phase was from 17 January to 6 February 2022. By the end of the registration period, there were 22,120,458, an increase of 12.79% from the 2017 elections.

The IEBC registered 7,483 prisoners, a 44.4% increase from 2017 and 10,444 citizens in the Diaspora, a 147.3% increase to vote in 2022. The mission commends Kenya for taking these exceptional measures to enfranchise diasporans and prisoners.

The AU-COMESA EOM noted that despite the relatively high youth population (18-35), there was low youth registration in the 2022 elections. Only 39.84% (8,812,790) of the total registered voters were youth, a decline of 5.17% from the 2017 figures. Stakeholders consulted by the Mission attributed the low youth participation to the general conception that the votes do not count in elections, lack of trust and confidence in the political system, and the youth's unemployment and poverty in particular face in Kenya today.

The Mission acknowledged the efforts made by the IEBC to audit the voter register to enhance its accuracy and completeness to build confidence among the stakeholders. Assessment by the Klynveld Peat Marwick Goerdeler (KPMG) auditing firm highlighted key findings arising from the voter register. These relate to the transfers and voter details updates processes, registration of voters' database and systems controls inclusiveness in the registration of voters and makes recommendations to address reported findings. Although the IEBC embarked on remedial measures to update the voters' register, there were still concerns about duplications and deceased persons enlisted.

Registration of Candidates, Political Parties and Coalitions

The 2022 elections witnessed a high level of participation of political parties and independent candidates. Out of the 90 registered parties, 81 contested the elections. Of the 16,105 candidates, 28.1% were independents. Many independent candidates were reportedly dissatisfied with the candidate selection processes within political parties. Notwithstanding this, the party primaries in 2022 were reportedly more peaceful than in 2017.

Similar to the 2013 and 2017 general elections, coalition politics and realigning of political interests and alliances featured prominently in the 2022 elections. In the context of the 2022 elections, the formation of coalitions changed the political dynamics, making elections more competitive and issue-based. The two main coalitions that emerged were: the *Kwanza Alliance Coalition*, which brought together twelve (12) political parties led by Deputy President Dr. William Ruto, and *Azimio la Umoja Coalition Party*, which comprises 23 political parties headed by former Prime Minister Hon. Raila Odinga.

Campaign Environment

The campaign environment was vibrant and largely peaceful. Political parties and candidates used various campaign methods such as mass rallies, door-to-door, distribution of campaign materials, and mainstream and social media, among others. The campaign messages were centred around socio-economic issues rather than on an ethnic basis as was in the past.

While the campaigns were largely peaceful and issue-based, hate speeches, misuse of state resources, non-adherence to campaign schedules, violence, and use of criminal gangs were observed. The misuse of state resources created an unlevel playfield, especially for smaller political players. Likewise, the non-adherence to campaign schedules caused clashes among supporters. For example, in Muranga and Nyeri Counties, the Mission's Long-Term Observers (LTOs) witnessed clashes between the Jubilee Party and UDA supporters during campaign rallies resulting in violence, injuries and destruction of property. Further, the political use of criminal gangs to target political opponents by creating political zones of influence inhibited free campaigns, especially for women candidates.

The Media Environment

Kenya has a vibrant and pluralistic media landscape which enjoys freedom. Freedom of the press was seen during the electoral process as media outlets had the space to carry out their duties.

The media played a significant role in civic and voter education, fact-checking, covering political candidates' activities, peace messaging, serving a "watchdog" function and providing information to the public during the elections.

Whilst there was widespread use of media in the electoral process, the Mission noted the misuse of social media to undermine the credibility of key institutions such as the IEBC, NCIC, the Judiciary, and the National Police Service, among others. Misinformation and disinformation arising from social media platforms remain of concern.

Participation of Women, Youth and National Minorities

In line with the Constitution, the IEBC put in place various measures to facilitate the participation of marginalized groups as both voters and candidates in the 9 August General Elections. These measures included reducing the nomination fees for women aspirants, youth and Persons with Disabilities (PWDs) by half, developing and disseminating voter education messages targeting Special Interest Groups (SIGs), and convening the Women, Youth and Disability Inclusion Coordinating, Committees. The Mission, however, is concerned about the low number of young voters registered and the underrepresentation of women.

The Mission is further concerned about the challenges of participation faced by women, youth and PWDs in the 2022 electoral process. These challenges include limited resources, access to information, stigmatization, uneven playfield, limited access to national identification documents and sexual and gender-based violence.

Although special seats are reserved for the Women Representatives in the National Assembly in every County, which is commendable, the participation of women in other competitive positions is below the Constitutional provision and AU and COMESA benchmarks. Out of the 16,105 candidates contested in the General Elections, female candidates were 1,962 (which translates to 12.18%), while youth represented 28% of the candidates.

Civil Society

Kenya's vibrant civil society monitors and observes key electoral processes, advocates for electoral reforms, and conducts civic and voter education campaigns. The Mission appreciated civil society's role in the electoral process and in promoting peace and stability in the country. The Mission noted the active involvement of various civil society organisations in the electoral process. The Mission appreciates that CSOs also deployed observers and monitors throughout the electoral process.

Dispute Resolution

The Judiciary in Kenya continues to play a crucial role in guaranteeing the right to a fair hearing of aggrieved citizens and parties during the electoral process. Most stakeholders consulted expressed confidence in the Judiciary, as evidenced by the willingness of citizens to approach the courts for adjudication. The Mission notes the establishment of the Judiciary Committee on Elections (JCE) to adjudicate electoral petitions speedily.

The Mission notes, however, that last-minute electoral litigations and court decisions necessitated procedural changes, which posed a risk to the smooth implementation of electoral operations, as the IEBC had limited time to communicate and implement the changes.

Election Day

The Joint AU-COMESA EOM visited 504 polling stations in 38 counties across the country to observe the opening, voting, closing and counting processes. Of these, 59% were in urban areas, and 41% were in rural areas. Overall, the atmosphere was largely peaceful and orderly on election day, with isolated incidences of violence reported at Huruma Primary School in Turbo Constituency (Uasin Gushu County). The fighting voters were arrested and taken to the police station for questioning.

Most of the polling stations visited opened on time. However, 26% of these stations opened late. Most delays observed ranged between 10 and 30 minutes. However, there were a few instances, such as at Kenya Teachers Technical College in Nairobi, where the opening was delayed by more than 2 hours. The delay was attributed to

problems with the KIEMS, the late arrival of polling staff and materials, and poor preparations by polling staff. By and large, staff adhered to the opening procedures.

The voting process proceeded mainly in line with stipulated regulations. For instance, voters were verified before being issued with ballots, stations were laid out appropriately, the secrecy of the ballot was largely protected, voters requiring assistance were assisted, and party agents and observers were granted access to the polling stations. However, in 10.3% of the stations visited by the Mission's observers, some voters were turned away either because the KIEMS kit could not verify their biometrics and alphanumeric data or they were at the wrong polling stations or were not registered.

Gender parity was observed among the polling officials, while security personnel and party agents were predominantly male.

56% of the polling stations visited did not close on time due to late opening, voters still in the queue and compensation of time lost during the voting process. Closing and counting were conducted transparently in the presence of party agents and observers. The ballot reconciliation procedures were largely followed.

Overall, AU-COMESA observers assessed the conduct of polling staff, party agents and security personnel as largely competent and professional.

Recommendations

In the spirit of cooperation in the furtherance of peaceful, credible, and democratic elections in Kenya, the Mission offers the following preliminary recommendations:

To the people of Kenya

- Remain peaceful while waiting for the conclusion of the electoral process.

To the Government of Kenya

- Continue with efforts to create a conducive environment for peaceful, credible and inclusive elections.
- Strengthen national cohesion and dialogue mechanisms.
- Address some structural factors that impede the effective participation of women, youth and Persons with Disabilities (PWDs).

To the Election Management Body

- Identify and address the causes of the operational failures that led to the postponement of several elections on Election Day.
- Put in place effective communication strategies and mechanisms well in advance of election day.

- Improve the opportunities for participation of persons with disabilities.
- Regulate the number of observers in polling stations at any one time.

To Political Parties and Candidates

- Strengthen intra-party democracy, in particular, mechanisms for selecting candidates through elections or otherwise.
- Improve the training of candidate and party agents on monitoring voting procedures

Conclusion

Though highly competitive, the 9 August 2022 general elections were conducted in a comparatively peaceful environment. Some procedural changes enhance the process's transparency in accordance with Kenya's legal framework and regional and international obligations and commitments for democratic elections.

The joint AU-COMESA Election Observation Mission commends the authorities and people of Kenya for their efforts toward holding successful elections and deepening democratic rule, which is a prerequisite for sustainable socio-economic development in the country.

While the process is still ongoing and the results management process is underway, the Mission urges the candidates and their supporters to continue upholding the Peace Pledge and to desist from any action that could undermine the integrity of the electoral process. It encourages all stakeholders to continue with efforts toward building a peaceful and inclusive society. It further encouraged political tolerance and peace cultivation among citizens.